

**In the Matter Of:**

**MARC H. FISHMAN -against- CITY OF NEW ROCHELLE**

19-cv-265-NSR

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**MARC H. FISHMAN**

*October 17, 2023*

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October 17, 2023

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1 UNITED STATES DISTRICT COURT  
2  
3 SOUTHERN DISTRICT OF NEW YORK  
4  
5 Case No.: 19-cv-265-NSR  
-----x

6 MARC H. FISHMAN,  
7 Plaintiff,  
8 -against-  
9  
10 CITY OF NEW ROCHELLE, POLICE  
11 OFFICER LANE SCHLESINGER SHIELD  
12 #1058, JOSEPH F. SCHALLER, ROBERT  
13 GAZZOLA, IN HIS OFFICIAL CAPACITY  
AS POLICE COMMISSIONER OF THE  
CITY OF NEW ROCHELLE POLICE  
DEPARTMENT, SERGEANT MYRON  
JOSEPH SHIELD #18, & COUNTY OF  
WESTCHESTER,  
14 Defendants.  
-----x  
15  
16  
17 REMOTE DEPOSITION OF MARC H. FISHMAN  
18 Tuesday, October 17, 2023  
19  
20  
21  
22 Reported by:  
23 Amy A. Rivera, CSR, RPR, CLR  
24 JOB NO. J10406555  
25

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1:07 p.m.

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5 REMOTE deposition of MARC H. FISHMAN,  
6 held pursuant to Notice, before Amy A. Rivera,  
7 Certified Shorthand Reporter, Registered  
8 Professional Reporter, Certified LiveNote Reporter,  
9 and a Notary Public.

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2 R E M O T E A P P E A R A N C E S:  
3 LAW OFFICE OF CANER DEMIRAYAK, ESQ., P.C.  
4 Attorney for Plaintiff  
5 One Pierrepont Plaza  
6 300 Cadman Plaza, 12th Floor  
7 Brooklyn, NY 11201  
8 BY: CANER DEMIRAYAK, ESO.

10 THE QUINN LAW FIRM  
11 Attorneys for Defendants  
12 399 Knollwood Road, Suite 220  
13 White Plains, NY 10603  
14 BY: LALIT K. LOOMBA, ESQ.

16 ALSO PRESENT:  
17 Heidi Sarsony, Legal Video Specialist

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2 MR. DEMIRAYAK: I want to make a  
3 statement on the record. Any objection?

4 MR. LOOMBABA: I don't know what you're  
5 going to say, so go ahead.

6 MR. DEMIRAYAK: Cool. So I just want  
7 to confirm on the record that we did receive  
8 an audio call and two videos from the police  
9 station regarding this incident several days  
10 ago. I have reviewed it. My client has  
11 listened to the audio; however, my client  
12 has not been able to access the video or the  
13 audio connected to the video at this time.

14 We are working on trying to make it  
15 into an accessible format for him. So if  
16 you are going to ask questions regarding the  
17 police precinct video, just keep in mind  
18 that although it has been exchanged, the  
19 witness himself has not been able to view it  
20 and understand anything on it at this point.

21 Additionally, we'll follow up in  
22 writing, but there appears to be 51 minutes  
23 of missing video, which we're very concerned  
24 about. It's not a point of contention for  
25 today. Today you're going to be questioning

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2 Mr. Fishman regarding this lawsuit, and  
3 we'll follow up with that separately.

4 Other than that, I just want to thank  
5 you for agreeing to do this remotely and to  
6 working on an accommodation for Mr.  
7 Fishman's disabilities.

8 Other than that, we are ready to  
9 proceed.

10 MR. LOOMBIA: Okay. And that's fine,  
11 and I'll just say that pursuant to our  
12 agreement, if for some reason this remote  
13 deposition is not successful for whatever  
14 reason, maybe an inability to communicate or  
15 difficulties with communication, then  
16 pursuant to our agreement, you know, we  
17 reserve the right to continue the deposition  
18 as necessary in person, but hopefully we  
19 won't have to get to that and that we'll be  
20 successful today.

21 MR. DEMIRAYAK: And I don't think we  
22 will have an issue today. This realtime  
23 transcription that I'm seeing on my own  
24 screen as well appears to be the type of  
25 accommodation that will make it much easier

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2 for Mr. Fishman to fully participate. I  
3 don't expect any issues today, but if there  
4 are, he will let you know.

5 MR. LOOMB: Very good. We can swear  
6 him in then.

7                   VIDEOGRAPHER: Let me do my read on  
8 and then she can swear him.

9           This is file 1 to the videotaped  
10      deposition of Marc Fishman in the matter of  
11      Marc Fishman versus City of New Rochelle,  
12      being heard before the U.S. District Court,  
13      Southern District of New York, case number  
14      19-CV-265 NSR.

15 This deposition is being held via Zoom  
16 conferencing with all parties appearing  
17 remotely on October 17, 2023. The time is  
18 approximately 1:07 p.m.

19 The court reporter is Amy Rivera and  
20 my name is it Heidi Sarsony, the  
21 videographer.

22 Counsel, please introduce yourselves  
23 and affiliations, and then the witness will  
24 be sworn. Thank you.

25 MR. LOOMBA: My name is Lalit Loomba.

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2 I'm a partner at The Quinn Law Firm. We  
3 represent the City of New Rochelle.

4 MR. DEMIRAYAK: This is Caner  
5 Demirayak, plaintiff's counsel for Mr. Marc  
6 Fishman.

7 M A R C F I S H M A N, having been duly sworn  
8 by the Notary Public, testified as follows.

9 EXAMINATION

10 BY MR. LOOMBA:

11 Q. Good morning, Mr. Fishman. My name is  
12 Lalit Loomba. I'm an attorney at The Quinn Law  
13 Firm. We represent the City of New Rochelle in  
14 your lawsuit. We're here to take your deposition  
15 today.

16 How are you feeling today?

17 A. I'm okay. I have a headache, sore  
18 throat, but I'm okay. Good morning.

19 Q. Good morning.

20 And Mr. Fishman, where are you located  
21 right now?

22 A. I'm in Rancho Mirage, California.

23 Q. And are you inside a room somewhere?

24 A. Yes.

25 Q. And is there anybody else inside the

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2 real estate.

3 Q. Okay. And you continued to do that  
4 work today. Is that right?

5 A. Yes.

6 Q. At one time you were married to  
7 Jennifer Solomon. Is that correct?

8 A. Yes.

9 Q. Do you remember when you first married  
10 Ms. Solomon?

11 A. We got married July 4th, 2010.

12 Q. Was that your first marriage?

13 A. Yes.

14 Q. And when did your divorce with  
15 Ms. Solomon become final?

16 A. The trial -- the divorce trial was in  
17 August of 2012. I believe the judgment was signed  
18 off by the judge and recorded in October 2012.

19 Q. Did you remarry after your judgment of  
20 divorce was entered?

21 A. No.

22 Q. In 2018, you were -- I think you had a  
23 relationship with Isabella Bolivar. Is that  
24 correct?

25 A. Yes.

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2 Q. Okay.

3 A. What day was that? Let me just see  
4 here.

5 Q. That would have been about a year ago?

6 A. Yes, October 2022, Counselor, yes.

7 October 2022, yes.

8 Q. How long was the visit when you came  
9 to New York at that time?

10 A. In New York itself, I think it was  
11 half a day.

12 Q. How long were you in New York State  
13 during that visit?

14 A. Half a day.

15 Q. And then you flew back to California?

16 A. No, I traveled to New Jersey and  
17 Pennsylvania.

18 Q. Do you have any family in -- actually,  
19 withdrawn.

20 You have four children. Am I right?

21 A. Yes.

22 Q. The youngest are twins, and then you  
23 have one older son and one older daughter.

24 Did I get that correct?

25 A. You got it correct, yes.

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2 Q. And how old is your older, the oldest  
3 daughter now?

4 A. My oldest daughter right now is 19 and  
5 I believe going to be 20 in February 9th next  
6 year.

7 Q. Okay. And her name is Joanna?

8 A. Joanna Dora, yes.

9 Q. And I think then just going, you know,  
10 the next one, say going in reverse age would be  
11 your son Jonah. Is that correct?

12 A. Yes, Jonah Sydney Fishman, yes.

13 Q. And how old is Jonah now?

14 A. Jonah is 17 and 11 months, he'll be  
15 18, November 20th.

16 Q. And then the two younger ones, the  
17 twins, how old are they?

18 A. They're Sky and Aiden. They are 15  
19 and a half. They were born in July of 2008.

20 Q. Where does Sky and Aiden live right  
21 now?

22 A. I believe the boys live at 54 Halcyon  
23 Terrace, New Rochelle, New York.

24 Q. Okay. And that's with Ms. Solomon,  
25 their mother?

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2 A. Yes, I believe so.

3 Q. And same for Jonah?

4 A. You just mentioned the boys. I have  
5 three boys, yes, three boys live at 54 Halcyon  
6 Terrace.

7 Q. You're absolutely correct, Mr.  
8 Fishman. So Sky, Aiden, and Jonah live with their  
9 mother in New Rochelle, correct?

10 A. As far as -- as far as the reports I  
11 receive from the school, yes.

12 Q. Okay. And is your oldest daughter in  
13 college now or is she still in high school?

14 A. I've been informed she's in the  
15 University -- at Binghamton University,  
16 Binghamton, New York; sophomore.

17 Q. That's great. Thank you.

18 And right now, just a few questions  
19 about your medical care. Do you have a sort of a  
20 regular primary care physician in California?

21 A. Not a regular physician, I have a  
22 primary care group.

23 Q. And what's the name of that group?

24 A. Eisenhower Primary Care.

25 Q. Is that also in Rancho Mirage?

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2 you know, for the, you know, denied in person and  
3 virtual visits pending in the appellate courts New  
4 York.

5 Q. Okay. Understood. Thank you.

6                   We were talking about your disability  
7 aides, Efrim Cohen, you mentioned Joyce Fishman.  
8 Were there any others?

9 | A. Yes.

## 10 Q. Who?

11                   A.        I had Isabelle Bolivar Court-appointed  
12                   as the American With Disabilities Act aide.

13 Q. Which Court appointed her?

14 A. Family Court Judge Michelle Schauer in  
15 Yonkers. She moved to Yonkers and took the case  
16 with me.

17 Q. Is that how you first met Ms. Bolivar?

18 A. No.

19 Q. When did you first meet her?

20 A. I met Ms. Bolivar in December 2015.

21 Q. When was she appointed by Judge  
22 Schauer?

23                   A.        I believe the appointment was in March  
24 of 2018 in Court order.

25 Q. Okay. Did you ever live with

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2 Ms. Bolivar?

3 A. Yes.

4 Q. When did you first start living with  
5 her?

6 A. 2016.

7 Q. And that was in your apartment in  
8 Riverdale?

9 A. Yes.

10 Q. And how long did you live together  
11 with her in that apartment?

12 A. We lived together through January  
13 of -- let's see, through half of January 2022.

14 Q. Why did you and she stop living  
15 together?

16 A. Because I'm in rehab and surgeries in  
17 California and she still lives in New York.

18 Q. Does she still live in your apartment  
19 in Riverdale?

20 A. No.

21 Q. Do you own that apartment or did  
22 you -- withdrawn.

23 Did you ever own that apartment?

24 A. It's not owned in my individual name,  
25 no.

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2 confirm the visit that it was Hanukkah, and I  
3 celebrate Hanukkah, I'd like to see my kids, and  
4 is my visit on for the, you know, two-week cycle,  
5 which was tomorrow, the 15th.

6                   She wrote: Pick me up at 9 a.m. and,  
7 you know, I'll be outside for you to come get me  
8 for the visit.

9 Q. Okay. And so, am I correct that then  
10 you and -- Ms. Bolivar was living at your  
11 apartment in the Riverdale at the time?

12 A. Yes.

13 Q. And so the two of you woke up, got  
14 started, and drove into -- drove to pick up  
15 Ms. Elliott, the supervisor, correct?

16                   A.        Right.  Ms. Bolivar drove.  I was the  
17 passenger, yes, to pick up Ms. Elliott in Harlem,  
18 yes.

19 Q. Okay. And you picked her up at her  
20 house?

21 A. At her apartment building.

22 Q. Her apartment building, thank you.

23 And had you done that before?

24 A. Yes.

25 0. When you -- what time did you and

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2 A. Yes.

3 Q. How often did that occur?

4 A. Practically every visit on the return,  
5 Ms. Bolivar and Ms. Elliott, you know, drove to  
6 the house, you know, to drop off or pick up kids,  
7 one or the other.

8 Q. Okay. So how many times had  
9 Ms. Bolivar driven to the vicinity of  
10 Ms. Solomon's house at the beginning of the visit?

11 A. At least half a dozen times.

12 Q. Okay. So you leave the gas station,  
13 you driver towards Halcyon Terrace, and your  
14 testimony is that Ms. Bolivar parked the car about  
15 four houses away from Ms. Solomon's house?

16 A. Right.

17 Q. What happened next?

18 A. Ms. Ann Elliott got out of the car and  
19 walked onto Jennifer's property and rang the  
20 doorbell to speak with Jennifer.

21 Q. From where the car was parked, could  
22 you -- did you have a direct line of sight to  
23 Ms. Solomon's front door?

24 A. Yes.

25 Q. What did you observe?

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2 Q. You had a direct line of sight to  
3 Jonah as well?

4 A. I did.

5 Q. Okay. And when you were in the car,  
6 were the windows open or closed?

7 A. When I was in the car, the windows  
8 were closed.

9 Q. Okay. I should have been more  
10 specific.

11 When you were in the car and the car  
12 was parked, you know -- you know, as we were  
13 discussing it, the windows were closed?

14 A. Yes.

15 Q. Okay. Did you roll down the window or  
16 open the door and attempt to talk to Jonah?

17 A. I didn't roll down a window or open a  
18 door, no.

19 Q. Did you attempt to talk to Jonah?

20 A. Yes, I got out of the car as Ann  
21 Elliott was walking back and I yelled hello to my  
22 son, Jonah.

23 Q. To get out of the car, you had to open  
24 the door, right?

25 A. Yes.

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2 Q. Okay. So you did open the door?

3 A. Yes, I opened the door as Ann Elliott  
4 walked back to the car.

5 Q. You got out and you said hello to your  
6 son, Jonah?

7 A. Right. It appears Ann Elliott was  
8 walking towards us, right next to my son, because  
9 the driveway is after the front entrance after a  
10 landscaped area, I saw her walk away from the  
11 front entrance through the landscaped area towards  
12 the driveway, and I walked out of the car, stayed  
13 by the car, as Ann is walking towards to me, Ann  
14 way moving some stuff in the back seat so Jonah  
15 could get in with his 17 pieces of hockey safety  
16 equipment I bought him, you know.

17 Q. Okay. By the way, did he have that  
18 equipment with him?

19 A. He had the hockey stick with him.

20 Q. I know a little bit about hockey, so I  
21 know there's a lot involved there. So did he have  
22 all that gear with him or was it just his hockey  
23 stick?

24 A. He had the hockey stick, he had the  
25 hockey puck, he had some of the hockey tape. I

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2 saw there's like a substance we use to, I guess,  
3 rub the portion of the hockey stick that was on  
4 the ground. And I saw a helmet in the -- in the  
5 driveway where he was playing. I saw a net.

6 So, yeah, I saw hockey equipment, not  
7 all of it, but I saw hockey equipment in that  
8 driveway.

9 Q. What about his skates?

10                   A.        I saw the skates on the driveway as  
11 we -- as we drove by the house.

12 Q. Okay. So all right. You get out of  
13 the door. You say hello to your son, Jonah. Does  
14 he answer you?

15 A. No.

16 Q. Did he -- did you make eye contact  
17 with him?

18 A. No.

19 Q. Is there anything about the way he  
20 acted that made you believe he heard you?

21 A. No, I don't think he heard me.

22 Q. What happened next?

23                   A.        As Ann Elliott got close to the car,  
24       she said, the visit has been canceled. Your  
25       ex-wife has canceled the visit.

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2 Q. By the way, did Jonah -- as Ann  
3 Elliott was walking back towards the car, was he  
4 still just playing in the driveway?

5 A. Yes, he had a -- there was another  
6 male there who was older and taller, who he was  
7 playing with, and there was a net, and there was  
8 hockey equipment, and they were -- they were  
9 shooting a hockey stick and playing in the  
10 driveway.

11 Q. Did you ever see him run back to his  
12 house?

13 A. No, not while I was there. He didn't  
14 run back. He was playing with his friend the  
15 entire time we were there.

16 Q. So Ann comes back and says: The  
17 visit's been canceled, and tell me what happens  
18 after that?

19 A. I told Ann I wanted to go make a full  
20 report at the police station of a visitation  
21 violation and asked the cops if they could enforce  
22 my visitation order.

23 And Ms. Bolivar drove to the police  
24 station, I believe -- I think it's on Main Street  
25 or North Avenue. It's the building next to the

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2 Ms. Elliott was there as well, did you tell  
3 Officer Schlesinger that you suffered from a  
4 disability?

5 A. Yes, and I showed him my two  
6 disability cards.

7 Q. Okay. And when you said you suffered  
8 from a disability, which specific disability did  
9 you mention?

10 A. I said, I suffer from a traumatic  
11 brain injury and encephaloneuralgia and have a  
12 difficulty with my burning eyes reading very small  
13 print, and that the print on the order he showed  
14 me was very, very tiny.

15 So I started reading it, I get a  
16 headache, at which time, I started getting redder  
17 and redder, and got a headache, and had an  
18 encephaloneuralgia attack while sitting at the  
19 table.

20 Q. And did you ask Officer Schlesinger  
21 for a specific accommodation?

22 A. Multiple ones, yes.

23 Q. Which specific accommodations did you  
24 request?

25 A. I asked for my aide to come in to

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2 assist immediate with full and effective  
3 communication and reading and interpreting the  
4 order. I asked for myself and my aide to go to  
5 the car to get the Court file out of the trunk  
6 that had the order for the aide and had the  
7 visitation orders, as well as the calendar of  
8 visits and my medical information.

9 I asked the officer to go to the car  
10 and get it, if he wouldn't let myself or Isabelle  
11 go. I asked for a transcriber or an note taker to  
12 assist me if he wasn't going to allow Isabelle to  
13 come in. And I asked him for a notepad and a pen.

14 Q. Did you request any other  
15 disabilities?

16           A.       I asked him to call, you know, my  
17 neuro -- neuro doctors to confirm my disability  
18 and the phone number on the traumatic brain injury  
19 card, which is my -- my father to describe the  
20 accommodations and affirm the disability.

21 Q. Did you ask him for any other  
22 accommodations?

23                   A.        Yeah, I believe also to call my  
24   surgeon for the Inspire. There were three  
25   numbers; one was for Dr. Lubenaire, the

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2 neurosurgeon, on the implant card, the second  
3 implant card was the Inspire with Dr. Boris  
4 Chernobilsky's number on it, and then the other  
5 one, my father.

6 And then I reiterated, I need  
7 Ms. Bolivar here to assist me with communication  
8 in her Court-appointed role as the visitation and  
9 Americans With Disabilities advocate and allow her  
10 to come in.

11 Q. Other than what you've listed, did you  
12 ask for any other accommodations?

13 A. I don't recall.

14 Q. If Ms. Bolivar had been in the room  
15 with you, how would she have -- how do you think  
16 she would have helped you?

17           A.     Well, Ms. Bolivar would have brought  
18 the order, and she's appointed from March of 2018,  
19 and Ms. Bolivar would have been able to give a  
20 third perspective on what happened that day as the  
21 Court-appointed aide so that the officer didn't  
22 just have what he claimed was Jennifer's version,  
23 Ann Elliott's version, and my version.

24 She would also have been able to  
25 isolate the portions of the order of protection

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2 that have a carve-out for visitation, you know,

3 and also affirm the fact that I never received a

4 written copy of the alleged order of protection

5 from, I believe, it's June 27, '17, that was

6 allegedly written while I was in jail and never

7 given a physical copy to me.

8                           She would have affirmed that, and she  
9 would have been able to read the order. With  
10 encephaloneuralgia and burning eyes, I couldn't  
11 read single-spaced orders.

12 Q. So if she was there, she could have  
13 assisted you in -- in making Officer Schlesinger  
14 understand that you had a right to be where you  
15 were and that you did not violate the order. Is  
16 that -- is that accurate?

17           A.       That's a portion of accurate.  She  
18        could have read the order, Judge Schauer's order  
19        didn't comply with the ADA accommodation of  
20        16-bold print which was granted to me from Office  
21        of Court Administration, and William Curry, the  
22        ADA advocate.

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2 aide, without getting a headache.

3 Q. Understood.

4 And if she had been there and read the  
5 order, that would have helped you explain to  
6 Officer Schlesinger that, in fact, you hadn't  
7 done, you know, you had not violated any laws,  
8 right?

9 A. Correct. She could explain the fact  
10 that I didn't go on her property and that the  
11 order of protection was subject to limited  
12 supervised visitation every other Saturday, which  
13 this was and, that this was a preconfirmed,  
14 prepaid, prescheduled visit, and she could have  
15 went over the cancellation terms had my ex-wife or  
16 the AFC or Ann or anyone canceled it in writing,  
17 which is required, then it would immediately be  
18 rescheduled to the following weekend.

19 Without her help, I could not, you  
20 know, read that order or try to explain it to  
21 Officer Schlesinger, who said it was the most  
22 complicated visitation order he ever saw in his  
23 life.

24 Q. And the documents that were in the  
25 trunk of your car, is it fair to say that that

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2 would -- if you had had access to them, that would  
3 have also helped you explain to Officer  
4 Schlesinger that, in fact, you had not violated  
5 any laws, correct?

6           A.     Well, it wasn't my car, Isabelle  
7 Bolivar's car. But, yes, the documents she had in  
8 her purse and in her smart phone, and the paper  
9 documents would have shown that between 10 and 5,  
10 the 1st and 15th of every month, we have  
11 supervised visits. There's no violation, as long  
12 as Ann Elliott is around and the visit wasn't  
13 canceled in writing beforehand.

14 And that we didn't go on any property,  
15 and Ms. Bolivar could emphasize that. We didn't  
16 go on any property, and I hadn't communicated to  
17 Ms. Solomon, I haven't communicated with her  
18 directly since 2015.

19 Q. And I guess what I want to make sure I  
20 understand properly is that your position is if  
21 you had had access to your documents in the trunk,  
22 and if Ms. Bolivar had been there and was able to  
23 assist you in reading the orders, all of that  
24 could have helped you explain to Officer  
25 Schlesinger that you, in fact, had not violated

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2 of that would have helped you explain to Officer  
3 Schlesinger that you had not violated any laws?

4                   A.        Yes, together with a notepad or  
5 Ms. Bolivar could write it in large print and  
6 clarify the complicated order to everyone,  
7 including me.

8 Q. So you're saying also that in addition  
9 to the documents in the trunk, and having  
10 Ms. Bolivar present, if you had had access to a  
11 note pad, that also would have helped you explain  
12 to Officer Schlesinger that you had not violated  
13 any laws?

14 A. A notepad and pen, yes.

15 Q. Okay.

16           A.     For my aide to use to definitely write  
17     down pages and paragraph numbers of the  
18     complicated order.

19 Q. Okay. Thank you.

20 So besides Mr. -- sorry -- besides  
21 Officer Schlesinger, you said that you  
22 interactions with a lieutenant?

23                   A.        With, I believe, Myron Joseph. I'm  
24 not sure he was a lieutenant. I think he was a  
25 lieutenant. I'm not sure what his title was then.

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2 A. Twice.

3 Q. When was the -- was this the first  
4 time or the second time?

5 A. Second time.

6 Q. And when was the first time?

7 A. I believe it was in 2010 in Fairfield  
8 County, Danbury, Connecticut.

9 Q. By the way, do you remember while you  
10 were in the holding cell, the one that we could  
11 see there in camera No. 3 telling Officer  
12 Schlesinger: I appreciate your professionalism?

13 A. I don't recall.

14 Q. And do you recall in a separate moment  
15 while you were still inside the holding cell that  
16 we can see in camera No. 3, that you said to  
17 Officer Schlesinger: Thank you for your  
18 professionalism?

19 A. I know I told him thank you for the  
20 coat.

21 Q. That's not my question, Mr. Fishman.  
22 Just --

23 A. No, I don't recall that.

24 Q. Okay. Thank you.

25 All right. So following this arrest,

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2 you were charged with violating an order of  
3 protection. Is that right?

4 A. Criminal contempt in the second  
5 degree; that's right.

6 Q. And then you stood trial before a jury  
7 in January of 2020. Is that correct?

8 A. Yes.

9 Q. All right. And the jury found you  
10 guilty of attempting to violate the order of  
11 protection?

12 A. Attempting and criminal contempt in  
13 the second degree, both charges for one alleged  
14 crime.

15 Q. And you made -- and lawyers  
16 representing you on your behalf made various  
17 motions to vacate the jury verdict, correct?

18 A. A lawyer made motions and I made  
19 motions pro se.

20 Q. Okay. So both yourself and lawyers on  
21 your behalf moved to vacate the jury verdict. Is  
22 that accurate?

23 A. Yes.

24 Q. And is it accurate that all those  
25 motions were denied?

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2 A. No.

3 Q. So you're saying that the jury verdict  
4 was vacated by a Court order?

5 A. No. I'm saying one of the motions was  
6 not answered by Judge Zuckerman. He never  
7 answered.

8 Q. And am I correct that following the  
9 jury verdict finding you guilty of attempting to  
10 violate an order of protection and violating the  
11 order of protection, that you have not appeared  
12 for your sentencing?

13 A. That's incorrect. I appeared over a  
14 half dozen times in person until he decided not to  
15 sentence me. I also appeared virtually more than  
16 a half a dozen times, and they didn't sentence me.

17 Q. And you appeared in January of 2020 to  
18 be sentenced?

19 A. Post-January 28th; January, February  
20 and March of '20; yes, sir.

21 Q. And you understand there's a bench  
22 warrant for your arrest because you have not  
23 appeared for your sentencing in this case?

24 MR. DEMIRAYAK: Note my objection as  
25 asked and answered.

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2 3:51 p.m.

3 (Recess.)

4 VIDEOGRAPHER: We are back on the  
5 record. The time is 4 o'clock p.m.

6 BY MR. LOOMBA:

7 Q. Okay. Welcome back, Mr. Fishman.

8 So we had, when we stopped, I was  
9 showing you what we were going to mark as Exhibit  
10 A for your deposition, which is your first amended  
11 complaint, and I am now showing you a portion of  
12 paragraph 83 of that document.

13 Do you see it on your screen?

14 A. Yes.

15 Q. Okay. And I'll read it slowly and you  
16 can watch it and you can also watch the realtime  
17 transcription. Paragraph 83:

18 The failure to accommodate resulted in  
19 plaintiff being arrested and charged for crimes he  
20 was actually innocent of and for which the police  
21 lacked probable cause, but for the failure to  
22 accommodate plaintiff's disabilities, he would  
23 have been able to explain to the defendants that  
24 the 28-page custody and visitation order made his  
25 conduct on December 15, 2018 completely legal.

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2 Do you see the -- do you see where I  
3 read?

4 A. Yes.

5 Q. Okay. And I think you know, I'm just  
6 confirming your earlier testimony, but do you  
7 believe that to be accurate?

8 A. Yes, a hundred percent accurate.

9 MR. LOOMBA: Okay, good; all right.

10 I'm going to mark the next document;  
11 sorry, just bear with me here. This is --  
12 oh, sorry. Here we go; okay.

13 We're going to mark this as Exhibit B  
14 like boy.

15 (Exhibit B, Plaintiff's initial  
16 disclosure, was marked for identification at  
17 this time.)

18 Q. And Mr. Fishman, do you see that this  
19 is a document called "Plaintiff's Initial  
20 Disclosure, pursuant to Rule 26A"?

21 A. Yes.

22 Q. Okay. Have you seen this document  
23 before?

24 A. Yes.

25 Q. All right.

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## 2 CERTIFICATE

3

I, AMY A. RIVERA, a Certified Shorthand  
Reporter, Registered Professional Reporter,  
Certified LiveNote Reporter, and Notary Public of  
the State of New Jersey, do hereby certify that  
prior to the commencement of the examination MARC H.  
FISHMAN was duly sworn by me to testify the truth,  
the whole truth and nothing but the truth.

10

I DO FURTHER CERTIFY that the foregoing is  
a true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place and on the date hereinbefore set forth.

11

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of  
any of the parties to this action, and that I am  
neither a relative nor employee of such attorney or  
counsel, and that I am not financially interested in  
the action.



19

20

Notary Public of the State of New Jersey

21

My commission expires July 29, 2025

22

License No. XI00939

23

Dated: October 17, 2023

24

25